

to require the refusal of the prayer for a temporary injunction. The volume of assisting and counter affidavits was large, and the conflict of this testimony sharp and emphatic, such as must, in the nature of the case, make variant impressions on the minds of different judges as to the facts shown. The summary of the proof made in the opinion of the judge of the circuit court is fairly supported by the record, and shows that there was proof tending to support the allegations of the bill. The providing by law for an appeal from an interlocutory order granting an injunction certainly clothes the court of appeals with the power and charges it with the duty of reviewing, and in a proper case reversing, the action of the trial court in granting such injunctions; but as to issues of fact, presented as they only can be presented in such cases, the findings of the facts expressed or implied in the action of the trial court should be given due weight, and its action, so far as it rests on, or is affected by, the state of facts proved, should not be reversed unless it is made clearly to appear that it was improvident and hurtful to the appellant. In this case the most that can be urged against the order having relation to the state of the proof is that it was unnecessary. It only enjoined the appellants from doing, pending this suit, what the statute forbids and provides may be prevented by injunction. On this appeal from an interlocutory order, which we affirm, we deem it unnecessary to anticipate the further progress and final hearing of this case by an expression of our views as to the full scope and sound construction of this recent and important statute. The order of the circuit court is affirmed.

BARR v. PITTSBURGH PLATE-GLASS CO. et al

(Circuit Court of Appeals, Third Circuit. August 15, 1893.)

1. CORPORATIONS—DIRECTORS—INDEPENDENT BUSINESS.

Directors, who are also officers, of a manufacturing corporation, if acting in positive good faith to the corporation and their co-stockholders, are not precluded from engaging in the building and operation of other distinct works in the same general business, (here the manufacture of plate glass;) and they do not stand, in respect to said works, in any trust relation to the corporation. 51 Fed. Rep. 33, affirmed.

2. SAME—EQUITY—CONTRACT WITH DIRECTORS.

A stockholder and a director of a plate-glass manufacturing company built other plate-glass works, and at the solicitation of other stockholders sold them to the company. They refused to state the cost of the works, and the consolidation was made on the basis of capacity in production. This arrangement was ratified by unanimous vote at a stockholders' meeting, and no stockholder not present at such meeting ever objected thereto. Objection was thereafter made by a stockholder who had been present, on the ground that the price paid for the new works had been excessive. Thereupon the former owners of said works offered to rescind the sale, but a committee appointed by the stockholders not interested in said works reported adversely thereto, which report was ratified by 7,357 out of a total of 7,988 of such disinterested shares. *Held*, that a stockholders' bill, praying relief on the ground of fraud in this transaction, should be dismissed. 51 Fed. Rep. 33, affirmed.

3. SAME.

The directors and one other stockholder of a manufacturing corporation, owning among themselves a majority of the stock, conceived that the demands of trade required the erection of additional works, which they desired the corporation to build, but the project was defeated by minority stockholders. The projectors then proceeded with their own funds to build independent works. Bad faith to the corporation was not imputable to any of them. When the works were nearing completion the corporation bought them upon terms not unconscionable in themselves, and which had been approved by a stock vote of 16,706 to 1,174 shares. The vendors, desiring to have the question decided by the minority stockholders, withheld their own votes until a large majority of the other stockholders had voted in favor of the purchase, and then cast their votes with the majority of the minority. The plaintiff, a minority stockholder, by his bill sought to reduce the vendors' profit. *Held*, that he was not entitled to relief. 51 Fed. Rep. 33, affirmed.

4. SAME—DIRECTOR'S CONTRACTS.

A director of a joint-stock company may make a valid contract with the company, if in so doing he deals fairly and honestly with the stockholders who have appointed him their agent. *Oil Co. v. Marbury*, 91 U. S. 587, followed.

5. COSTS—PLAINTIFF'S FAILURE TO PROVE FRAUD—LIABILITY.

A stockholders' bill, charging certain directors with fraud in contracts made by them with the corporation, and seeking to enforce the restitution of exorbitant profits made by them in such contracts, was dismissed for want of equity. *Held*, that plaintiff must pay the costs.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

In Equity. This is a stockholder's bill, filed by Samuel F. Barr, a citizen of the state of Maine, against the Pittsburgh Plate-Glass Company, a corporation of Pennsylvania; Edward Ford, Artemus Pitcairn, Emory L. Ford, and John Pitcairn, Jr., officers and directors of the said corporation; J. B. Ford, Edward Ford, Emory L. Ford, Artemus Pitcairn, and John Pitcairn, Jr., associated together under the firm name of J. B. Ford & Co. The bill was filed against the above-named officers and directors on the ground that they controlled the corporation and prevented a suit by the latter. The bill charges combination and conspiracy, on the part of the persons named as respondents, to defraud the corporation, and seeks to charge them as trustees, and to compel a restitution of illegal profits made by them out of contracts with the corporation. A demurrer to the bill was overruled, and a decree thereafter rendered for the respondents. Complainant appeals.

The bill alleges, in substance:

(1) That J. B. Ford, Edward Ford and Emory L. Ford, sons of J. B. Ford, were the promoters of an organization known as the New York City Plate-Glass Company, organized under the laws of New York, with a capital stock of \$800,000, all of which said Fords took in consideration of a plate-glass works plant about to be by them constructed. (2) That the plaintiff was an owner of shares of stock in that company. (3) That the New York City Plate-Glass Company was reorganized under the laws of Pennsylvania, under the name of the Pittsburgh Plate-Glass Company, in August, 1883, taking over to itself all the assets of the former corporation, and having the same capital stock. (4) That the said John Pitcairn, Jr., Edward Ford, Emory L. Ford, and Artemus Pitcairn, being directors of the Pittsburgh Plate-Glass Company, and J. B. Ford, entered into a conspiracy and combination to erect and build similar plate-glass works of larger capacity at Tarentum, in Alle-

gheny county, Pa., about a mile distant from the works of the Pittsburgh Plate-Glass Company, and to compel the said Pittsburgh Plate-Glass Company to purchase the same, to prevent a dangerous and destructive competition therefrom, for the price of 10,000 shares of the capital stock of said company, of the par value of \$1,000,000, worth then in the market \$155 per share, making the real consideration \$1,550,000; and that at the time the said John Pitcairn, Jr., Edward Ford, Emory Ford, Artemus Pitcairn, and J. B. Ford held together 4,350 shares out of 6,000 shares of the capital stock; that said sale was consummated; that any information as to the actual cost of the works was refused to stockholders; and the bill avers that the actual cost of the said works did not exceed \$647,000. (5) That thereupon the capital stock of the Pittsburgh Plate-Glass Company was increased to the amount of \$2,000,000, and purchase-money shares, as aforesaid, were issued to the vendors; and that, a division of the purchase-money stock having been made, the said J. B. Ford was made to appear as the owner of 4,000 shares, John Pitcairn, Jr., of 8,212 shares, Emory L. Ford of 500 shares, and Artemus Pitcairn of 200 shares. That the board of directors at that time consisted of John Pitcairn, Jr., Edward Ford, Emory L. Ford, Artemus Pitcairn, and John Scott, (since dead,) Edward Ford being the president, Emory L. Ford, secretary, and John Pitcairn, Jr., having resigned the vice presidency, Artemus Pitcairn succeeded him in that office. (6) The bill further avers that the said John Pitcairn, Jr., Edward Ford, E. L. Ford, and Artemus Pitcairn, directors of said company, entered into a conspiracy with J. B. Ford to erect another and additional plate-glass works at Ford City, Armstrong county, Pa., and to compel the Pittsburgh Plate-Glass Company to purchase the same, at such price as they might see fit to exact, by reason of the menace which said works so constructed would present of disastrous or ruinous competition should the Pittsburgh Plate-Glass Company not make the purchase of the same; and that these persons formed a conspiracy, under the name of J. B. Ford & Co., to construct such works, and at the date of the filing of the bill had proposed to sell them to the Pittsburgh Plate-Glass Company for \$750,000 of first-mortgage bonds and \$750,000 of the capital stock of the company, to be issued at par, the bonds to mature in three, four, and five years, with interest at 6 per cent.; and that the capital stock of the company at that time commanded a premium of \$62.50 per share, so that the price aforesaid in reality amounted to \$1,968,750; and that the said works when completed would not cost more than \$1,000,000. (7) That said directors and J. B. Ford claimed the right to build competitive works for their own benefit, to be operated by themselves, or to be sold to others for that purpose; and that said Ford City works were then in partial operation, and constituted a direct threat and menace to the Pittsburgh Plate-Glass Company to compel them to accede to the demands of the syndicate; and that said syndicate controlled about seven-tenths of the capital stock of said company, upon the then capitalization of the company. (8) That the directors, together with J. B. Ford, in pursuance of such conspiracy, by their undue influence and efforts, had procured a vote authorizing the acceptance of said offer to sell said Ford City works, and to that end had taken steps to procure an increase of the capital stock of the company to \$2,750,000, and to procure the amendment of their charter powers to enable them to carry on their corporate business in other counties than the county of Allegheny. (9) That all the members of the board of directors of the Pittsburgh Plate-Glass Company, and all the officers thereof except the treasurer, were members of the syndicate firm of J. B. Ford & Co., and were interested in the consummation of the proposed sale of the Ford City works, and that seven-tenths of the capital stock of the company were held by them.

The bill then proceeds to aver that the said directors, acting in concert with the said J. B. Ford, he, the said J. B. Ford, knowing their official and trust relation, are prohibited from acting in derogation of the interests they represent as officers and directors to the prejudice of the Pittsburgh Plate-Glass Company, and that the works so erected by them were equitably the property of said Pittsburgh Plate-Glass Company, for the construction of which they, said corporation, should pay the actual cost thereof, with such reasonable profit as the court might allow to the constructors thereof.